

### Remarks

Various combinations of the claims 1- 17 stand rejected as *obvious* on various combinations of the cited art discussed above. In order to substantiate a rejection for *obviousness*, the Examiner is required to set forth in his Office Action: (A) the relevant teachings of the prior art relied upon, including making reference to the relevant column of page number(s) and the line number(s) where appropriate; (B) the difference or differences in the claim over the applied reference(s); (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter; and (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. See MPEP 706.02(j). The Examiner has failed to adequately provide all of this information, and in particular the Examiner has been silent of part (B) the differences, and part (D) the incentive to make the proposed changes and the chances of success, therefore the standing rejections of claims 1- 17 are without proper foundation and must be withdrawn. The four standing rejections are each *TRAVERSED*.

To establish a *prima facie* case of obviousness the following three basic criteria must be met: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the specific reference(s) teachings; 2) there must be a reasonable expectation of success in combining the specific reference(s) teachings; and 3) the prior reference (or references when combined) must teach or suggest all of the claim limitations. See MPEP 706.02.

The teachings or suggestion to combine and the reasonable expectation of success must both be found in the prior art and not based upon the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed Cir 1991); also see MPEP 2143 - 2143.03 for additional decisions pertinent to each of the criteria. The initial burden is on the Examiner to provide

support for a *prima facie* case. *Ex parte Clapp*, 277 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

In remarking on what in the prior art the Examiner has relied upon, the Examiner has failed to point out: (1) the suggestion or motivation in the references themselves or in the knowledge generally available which suggests a need or purpose for combining the specific references; (2) the reasonable expectation of success in combining the specific references; and (3) where the prior references teach or suggest all of the recited claim limitations. The Examiner has not justified a need, a purpose and a result for the combination of prior art proposed. Whereof, the Examiner has not met his specific burden of providing support for a *prima facie* case and therefore the standing 35 USC 103 rejection must be withdrawn.

In this regard, Anderson does not show nor suggest a weakened rope with a diameter of section 63 along its entire length. Anderson's weakened section 63 cannot be extended the length of his rope as that would change the working diameter of the rope and the normally accepted size would not be provided. Moreover, as analyzed above, if Anderson were to take a 5/16 to 1.0 inch rope and insert a weakened section 63 at the surface near his buoy 21 and at the sea bottom near his gillnet 23, these weakened sections would not haul correctly, would peel or spall or bunch up as the rope works over the sheaves of the hauler machine under the load of a catch.

For the reasons recited in the analysis above, Anderson cannot place an infinite number of his breakaway links throughout the length of his rope. That leaves the remaining length, i.e., the majority of the length, of the Anderson rope as a threat.

In contrast to Anderson, applicant's rope can break anywhere along its length. Specifically, applicant would like his rope to break at the point (or region of length) of greatest force exerted by a whale. This, when a whale is thrashing about, can be a point in contact with the whale, thereby affecting a release.

One of ordinary skill in the art would not apply Morris to Anderson. Morris contradicts Anderson by teaching additives to his polymers and a method of preparing these additives so that the polymer is not weakened. While Morris discusses various mixtures of polymers and various filler sizes and shapes, the gravaman of Morris' teaching is that any consideration of polymer mixture and filler particle size and shape is immaterial as long as the particles carry his organo titanium coating, i.e., have a surface of reactive hydroxy groups and/or about 0.1 to about 2 weight percent of absorbed water.

There is no incentive to apply the teachings of Morris to Anderson. If one did, the result would not change Anderson and Anderson would remain in need of his selected placement of breakaway links.

One of ordinary skill would not apply the fibrillated yarn of Lamb to Anderson's rope. The Lamb fibrillation would only exacerbate any peeling, spalling, bunching up or pre-mature wear out of the Anderson rope. A fibrillated rope would not handle well in a hauler machine which would wear it through quickly.

The Herrington individual strands of his net mesh have individual diameters smaller than his trawling pull ropes 12 and 13 which are larger and thicker. Individual small diameter strands of a net break, individually at lesser tensile forces than a head rope. So what? The Examiner has not recited how one of ordinary skill would apply the Herrington net to the Anderson rope and what would be the incentive.

The Examiner has alleged that it would be obvious to modify the trawler net 11 of Herrington such that the netting rope, *which the examiner has not identified and therefore must be interpreted as mesh strands*, breaks at a higher tension than the Herrington head rope. If one were to make the mesh strands 18-20 of an exotic material of phenomenal strength, how would that principle be applied to a buoy rope, and if so, such buoy rope would not break when a whale gets entangled.

If the mesh strands 18-20 of the Herrington net were to be made stronger, so that the Herrington head rope broke when a whale got entangled in the Herrington net, how would that save a whale. NOAA and National Marine Fisheries Service both say it would not.

Regardless, of the patentability of each of the 17 claims examined, applicant has chosen to delete several claims in order to add others, without additional expense.

For all of the above reasons, claims 1-12 and 18 -24 as presented herein above must be considered allowable.

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Respectfully submitted,  
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